

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 RENE-FABRICIO: DIAZ,
12 JUAN-JOSE: VADO,
13 Sramineus Homo, US Vessel

No. C-08-0835 MMC

**ORDER TO SHOW CAUSE WHY
ACTION SHOULD NOT BE DISMISSED**

14 Libellant,
15 v.

16 CITI BANK, US Vessel
17 DOES, ROES, and MOES 1-100, et al.,
18 US Vessel sand

19 Libellees,

20 RENE-FABRICIO: DIAZ
21 JUAN-JOSE: VADO
22 Lien Holders of the Vessel, the Real Party
23 In Interest, Lawful Man
24 Injured Third Party Intervenor/ Petitioner/
Libellant,

25 v.

26 CITI BANK, U.S. Vessel,
27 DOES, ROES, and MOES 1-100, et al.,
28 US VESSELS

INDIVIDUALLY AND SEVERALLY
Third Party Defendants/Libellees

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Before the Court is Rene-Fabricio Diaz and Juan-Jose Vado's (collectively,
"petitioners") "Petition for Libel of Review of an Administrative Judgment" ("Petition"), filed

1 February 6, 2008.

2 Petitioners are individuals and have named a banking institution as a defendant. In
 3 the Petition, petitioners allege "all parties are U.S. Vessels and fit the legal definition of a
 4 U.S. Vessel," (see Pet. ¶ 15), and "[t]he cargo is shipped via U.S. Postal Service and all
 5 parties are subject to the Postal Codes in this instant action," (see id. ¶ 18). Petitioners
 6 also assert the "Law of the flag: Man is created in the image of God and to reduce a man to
 7 chattel against the national debt is an affront to God. Exodus, 13:16 and Genesis 1:27."
 8 (See id. ¶ 10.)

9 "A trial court may act on its own initiative to note the inadequacy of a complaint and
 10 dismiss it for failure to state a claim . . ." Wong v. Bell, 642 F.2d 359, 361 (9th Cir. 1981)
 11 (citation omitted). Before such dismissal may be entered, the court ordinarily "must give
 12 notice of its sua sponte intention to invoke Rule 12(b)(6) and afford plaintiffs an opportunity
 13 to at least submit a written memorandum in opposition . . ." See id. at 362 (internal
 14 quotation and citation omitted). Sua sponte dismissal under Rule 12(b)(6) "may be made
 15 without notice," however, "where the claimant cannot possibly win relief." See Omar v.
 16 Sea-Land Service, Inc., 813 F.2d 986, 991 (9th Cir. 1987) (citing Wong, 642 F.2d at 362).

17 Here, petitioners' filing fails to allege any facts that could state a claim under either
 18 state or federal law. Further, and contrary to the title of petitioners' pleading, petitioners fail
 19 to allege the existence of an administrative decision, let alone a decision that a court has
 20 jurisdiction to review. Nevertheless, the Court will provide petitioners an opportunity to
 21 respond to this order.

22 Accordingly, petitioners are hereby ORDERED TO SHOW CAUSE, no later than
 23 February 29, 2008, and in writing not to exceed five pages, why the instant action should
 24 not be dismissed for failure to state a claim.

25 **IT IS SO ORDERED.**

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 27 Dated: February 12, 2008
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 MAXINE M. CHESNEY
 United States District Judge